

2. Did claimant provide respondent with timely notice of his accident or injury?
3. Does the Board have jurisdiction to review the Judge's finding that claimant meets the definition of being temporarily and totally disabled?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the July 1, 2004 preliminary hearing Order should be affirmed.

In March 2004, claimant was employed by respondent to install equipment and cables in offices in the Washington and Oregon areas. Claimant alleges that on March 17, 2004, he injured his right knee when stepping down from a ladder while working for respondent. Claimant felt some pain after the incident. According to claimant, he talked to William D. Lawson, Jr., whom claimant considered to be his supervisor, about hurting his knee within two hours of the incident. Claimant continued to work for respondent until he was suspended from respondent's employ on either April 2 or 5, 2004, for reasons not related to his accident. Claimant sought medical treatment for his knee from his family physician.

Respondent introduced the depositions of Patrick W. Sheldon and William D. Lawson, Jr., as exhibits at the preliminary hearing. Mr. Sheldon worked with claimant in March 2004. According to Mr. Sheldon, on one or two occasions claimant rubbed his knee and commented that his knee was a little sore. Mr. Sheldon stated that Mr. Lawson was the supervisor of the area where he and claimant were working in March 2004.

Mr. Lawson testified that before claimant was suspended from respondent's employ claimant told him he had hurt his knee but claimant did not relate the knee problem to work. Mr. Lawson also testified it was his responsibility to tell workers, including claimant, what jobs to do.

After observing claimant and another witness, Lisa Black, testify and reviewing the exhibits to the preliminary hearing transcript, the Judge apparently found claimant credible. The Board finds no reason to disturb the Judge's findings that claimant sustained an accidental injury arising out of and in the course of his employment with respondent and that claimant provided timely notice of the injury to respondent. Accordingly, the July 1, 2004 preliminary hearing Order should be affirmed.

Respondent contends claimant is not temporarily and totally disabled. That issue is not one of the issues listed in K.S.A. 44-534a(a)(2) that the Board has jurisdiction to review from a preliminary hearing order. Further, while the Board reviews those preliminary

hearing orders in which the judge has exceeded his or her authority,¹ Judge Clark did not exceed his jurisdiction by awarding temporary total disability benefits. In short, the Board does not have jurisdiction from an appeal of a preliminary hearing order to determine whether a worker meets the definition of being temporarily and totally disabled. Respondent, however, may reserve that issue for final award.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.²

WHEREFORE, the Board affirms the July 1, 2004 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

IT IS SO ORDERED.

Dated this ____ day of August 2004.

BOARD MEMBER

c: Russell B. Cranmer, Attorney for Claimant
Daniel N. Allmayer, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ K.S.A. 2003 Supp. 44-551(b)(2)(A).

² K.S.A. 44-534a(a)(2).